

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD MELVON SMITH,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:08-CV-607

CORRECTIONAL MEDICAL
SERVICES, et al.,

Defendants.

ORDER

This matter is before the Court on Plaintiff's Motion for Leave to File an Amended Complaint. (Dkt. #48). As discussed below, Plaintiff's motion is **granted in part and denied in part**.

Plaintiff initiated this action on June 24, 2008, against numerous defendants. (Dkt. #1). On October 23, 2008, the Court approved Plaintiff's previous request to amend his complaint. (Dkt. #16). Between November 7, 2008, and December 29, 2008, Defendants submitted three motions for summary judgment. (Dkt. #30, 45, 50). Plaintiff responded to these motions by filing the present motion to again amend his complaint.

In his proposed amended complaint, however, Plaintiff does not seek to assert any new claims. Instead, the only difference that the Court can discern between Plaintiff's first amended complaint (which is presently in effect) and his proposed amended complaint, is that the latter contains assertions in response to Defendants' arguments (articulated in their various motions for summary judgment) that Plaintiff has failed to properly exhaust the claims in his first amended complaint. Such

arguments are more appropriately presented in a response to Defendants' various motions, rather than in an amended complaint.

The Court, therefore, denies Plaintiff's motion to amend his complaint. The Court will, however, consider the documentary evidence submitted with Plaintiff's proposed amended complaint when addressing Defendants' various motions for summary judgment. Accordingly, Plaintiff's motion is **granted in part and denied in part**.

IT IS SO ORDERED.

Date: May 15, 2009

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge